

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

BIG SKY RANCH PARTNERS, LLC and
MAKAR PROPERTIES, LLC,

Plaintiffs,

vs.

THOMAS LEE MAHLEN,
HALVERSON MAHLEN & WRIGHT,
P.C., and ZURICH AMERICAN
INSURANCE COMPANY, and DOES 1-
10,

Defendants.

CV 24-83-BU-JTJ

ORDER

Having considered Defendant Zurich American Insurance Company's ("Zurich") Motion to Dismiss Counts II, III and IV of Plaintiffs' Complaint and Plaintiffs' request for punitive damages (Doc. 6), related briefing (Docs. 7, 20, and 24), and oral arguments on December 18, 2024 (Doc. 37), the Court **ORDERS** as follows:

1. Zurich's Motion to Dismiss Count II of Plaintiff's Complaint alleging negligence by Zurich is **GRANTED**. Count II, as pled, constitutes claims handling activity precluded by Mont. Code Ann. § 33-18-242(3).

2. Zurich's Motion to Dismiss Count III of Plaintiff's Complaint alleging breach of the implied covenant of good faith and fair dealing by Zurich is

GRANTED. Under Montana law, the implied covenant of good faith and fair dealing is part of every contract, and a breach of the implied covenant is a breach of contract. Therefore, Count III is redundant to Plaintiffs' Breach of Contract claim set forth in Count IV. To the extent Plaintiffs are attempting to assert Count III as a tort claim, Count III, as pled, constitutes claims handling activity precluded by Mont. Code Ann. § 33-18-242(3).

3. Zurich's motion to dismiss Count IV alleging breach of contract is **DENIED.** Count IV of Plaintiffs' Complaint states a plausible claim for relief.

4. Zurich's Motion to Dismiss Plaintiffs' request for punitive damages is **GRANTED.** Montana law does not allow punitive damages for a breach of contract claim.

DATED this 24th day of December 2024.



John Johnston
United States Magistrate Judge